



# San Diego City Attorney **MICHAEL J. AGUIRRE**

## NEWS RELEASE

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### **COURT VICTORY FOR VOTERS ON DONATION OF MT. SOLEDAD VETERAN'S WAR MEMORIAL TO FEDERAL GOVERNMENT**

**San Diego, CA:** Calling it a significant victory for the voters of San Diego, City Attorney Michael Aguirre announced today's action of the California Fourth District Court of Appeal to unanimously uphold the will of the citizens of San Diego to donate the Mt. Soledad Veteran's War Memorial to the federal government. The City Attorney's appeal to keep the Mt. Soledad Veteran's War Memorial intact was in response to 76% of voters who approved Proposition A in July, 2005, which donated the land to the federal government.

"This most recent chapter in the long history of the Constitutional issues before the Courts may be the final chapter," said City Attorney Aguirre. "It clears the path for the transfer of the property to the federal government, and in my opinion my render any further federal appeals moot."

Today's appellate court decision reverses the October, 2005 decision by San Diego Superior Court Judge Patricia Cowett, who ruled that the land donation violated the State Constitution. *Philip K. Paulson v. Charles Abdelnour, as City Clerk, etc., et al.*, GIC 849667.

This past October, there was a spirited debate before the Fourth Court of Appeal questioning whether the court could objectively decipher voter intent in supporting Proposition A. The Court could not find objective evidence that the voters intended to donate the property in order to preserve the cross—which would have benefited religion in violation of the State Constitution and the First Amendment to the U.S. Constitution.

Still pending is the City's appeal before the United States Court of Appeals for the Ninth Circuit of federal Judge Gordon Thompson, Sr.'s order in May 2006, that the cross be removed, or the City would be fined.

Critical to today's Court action was the San Diego City Attorney's successful motion filed in July 2006, with U.S. Supreme Court Justice Anthony M. Kennedy who agreed to suspend Judge Thompson's ruling to remove the Mt. Soledad Cross by August 1, 2006, in order to allow the appeals to proceed without the threat of fines for not removing the cross.

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**BACKGROUND:**

- On May 3, 2006, the United States District Court ordered the City to remove the centerpiece memorial cross from the Mt. Soledad Veterans War Memorial within 90 days or face fines of \$5,000 per day if the cross remained on City property.
- The Court was acting on the original federal lawsuit filed in 1989 challenging the display of the cross on City property.
- The City subsequently appealed to the United States Court of Appeal for the Ninth Circuit, and asked for a stay, on June 2, 2006, of the District Court's order pending appeal.
- Although the Ninth Circuit declined to suspend the order, United States Supreme Court Justice Anthony Kennedy granted the City's request on July 7, 2006, allowing the appeals to proceed without the threat of fines for not removing the cross.
- The United States Congress passed additional legislation in August 2006, in an effort to effectuate federal legislation designating the Mt. Soledad Veterans War Memorial as a national memorial. The legislation authorized the federal government to acquire the memorial property.
- On August 14, 2006, President Bush signed the Mt. Soledad Veterans War Memorial Act into law immediately vesting in the United States all right, title, and interest in the memorial. As a result, the memorial now rests in federal hands and no longer belongs to the City. Legal challenges to the federal taking of the memorial property are currently pending in the United States District Court.

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